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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
the Commission's Forfeiture Policy)
Statement and Amendment of §1.80)
of the Rules to Incorporate the)
Forfeiture Guidelines)

CI Docket No. 95-6

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

**REPLY COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The American Mobile Telecommunications Association, Inc. ("AMTA" or the "Association"), pursuant to § 1.415 of the Federal Communications Commission ("FCC" or the "Commission") Rules and Regulations, 47 C.F.R. § 1.415, respectfully submits its Reply Comments in the above-referenced proceeding.¹ AMTA supports the goals of the Commission in this proceeding, namely the comparable treatment of similarly situated offenders and clearer guidance to the public regarding the forfeitures to be expected for particular violations.²

The record in this proceeding supports the Commission's proposal to use its *Forfeiture Policy Statement*³ guidelines as general guidance, but to retain discretion to

¹ *Notice of Proposed Rule Making*, CI Docket No. 95-6, FCC 95-24, adopted January 13, 1995, released February 10, 1995 ("NPR" or "Notice").

² NPR at 2.

³ *Policy Statement, Standards for Assessing Forfeitures*, 6 FCC Rcd 4695 (1991), *recon. denied*, 7 FCC Rcd 5339 (1992), *revised*, 8 FCC Rcd 6215 (1993).

depart from the guidelines based on the facts and circumstances in each case.⁴ The comments generally do not, however, support the guidelines in their present form. The record provides a strong consensus against widely differing base forfeiture amounts for different classes of licensees for the same violation. Many commenters especially note the unreasonably high base forfeiture amount for common carriers, regardless of their size.

I. The Record Supports Non-Binding Forfeiture Guidelines.

In the *NPR*, the Commission proposes to institute guidelines for imposing forfeitures that are identical to its 1993 *Forfeiture Policy Statement*; however, the FCC notes that it proposes to adopt the guidelines as a non-binding framework. It proposes to continue to base each decision on specific facts, using the *Forfeiture Policy Statement's* adjustment factors, and possibly other factors, in arriving at a forfeiture amount. The Commission also proposes to retain its discretion not to issue forfeitures in particular circumstances.⁵

Many parties commenting in this proceeding agree with AMTA in supporting the Commission's proposal to adopt forfeiture standards.⁶ Adopting a set of

⁴ *NPR* at 3.

⁵ *Id.*

⁶ See, e.g., Comments of the United States Telephone Association (USTA) at 2; Comments of the Personal Communications Industry Association (PCIA) at 1; Comments of Southwestern Bell Telephone Company (SWB) at 2.

guidelines will promote uniformity for similarly-situated licensees. In addition, by outlining the severity of proposed forfeitures for various types of violations, the Commission provides important guidance for licensees in preventing violations from occurring. There is no support in the record for adoption of the guidelines as a binding rule; rather, commenters implicitly or explicitly expect the FCC to adjust all base forfeiture amounts based on individual facts and circumstances.

II. The Record Favors Modifying Proposed Categories of Licensees.

The *Notice* proposes to adopt the 1993 *Forfeiture Policy Statement*, which provides base forfeiture amounts in three categories: Broadcast/Cable; Common Carrier; and Other.⁷ Base forfeiture amounts are set at a uniform percentage of the statutory maximum for each category, based on the Commission's perception of the severity of the violation. The guidelines also include both upward and downward adjustment criteria that may be used based on circumstances in a particular case.⁸

In its Comments, AMTA urged the FCC to modify the proposed categories to better reflect the realities of today's communications industry. AMTA and several other commenters noted that base forfeiture amounts for common carriers are nearly always four times as high as those for broadcast/cable licensees, and ten times as high

⁷ *NPR* at 7.

⁸ *Id.* at 8-12.

as those applied to other, miscellaneous category operators for the same violation.⁹ As service offerings merge among various classes of licensees, these widely-differing base amounts no longer make regulatory sense, nor do they reflect the Commission's goals of regulatory parity.¹⁰ In addition, several commenters noted the widely-varying size of licensed entities within classes, especially common carriers; some suggested that guidelines be modified to reflect the size of the licensee.¹¹ The record thus supports modification of the proposed categories.

III. CMRS Licensees Should Be Subject to Forfeitures Similar to the "Other" Category

Several commenters agree with AMTA's recommendation that commercial mobile radio service (CMRS) licensees be differentiated from other common carriers, and subject to the same base forfeiture amounts as those included in the "Other" category.¹² The Comments of WJG Maritel, especially, echo AMTA's concern that thousands of licensees formerly classified as private land mobile operators are now or shortly will be considered common carriers under the CMRS rules.¹³ Most of these

⁹ See, e.g., Comments of SWB at 3; Comments of MobileMedia Communications, Inc. (MobileMedia) at 4; Comments of Paging Network, Inc. (PageNet) at 6; Comments of PCIA at 3-4.

¹⁰ See Comments of SWB at 3.

¹¹ See Comments of Mobile Phone of Texas at 19-20.

¹² See Comments of MobileMedia at 3; Comments of PageNet at 6, n.2, and 8.

¹³ See Comments of WJG MarTEL Corp. at 3-4.

operators are extremely small businesses; it is unreasonable to subject these businesses to base forfeiture amounts ten times higher than in the past for the same violation.

"Simply put, the Commission should not treat all carriers as if they had the resources of AT&T or MCI."¹⁴ Even with the FCC's discretion to adjust proposed forfeitures based on "ability to pay", a single forfeiture imposed could destroy many of these businesses.

Under previous forfeiture guidelines, those licensees now reclassified as CMRS were subject to private radio standards, equal to those now listed as "Other". AMTA urges the Commission to create a category for CMRS licensees with base forfeiture amounts equal to the "Other" category. This level of penalty would both better reflect the size of these entities and meet the FCC's stated goal of comparable regulation of similarly-situated carriers.

IV. Conclusion

The record in this proceeding supports the use of forfeiture guidelines as a non-binding framework to assign liability for various violations of the Communications Act and the Commission's Rules. However, many commenters note with AMTA that the classes established by the Commission do not represent the true state of the communications industry, and that common carrier base forfeiture amounts are unreasonably high given the widely-varying size of licensees now classified as common

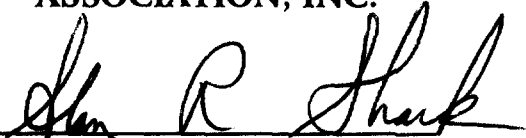
¹⁴ Comments of Mobile Phone of Texas at 19.

carriers. In light of their size and regulatory history, the FCC should establish a sub-category for CMRS licensees with a base forfeiture amount equal to the "Other" category.

AMTA urges the Commission to proceed expeditiously to complete this proceeding, consistent with the recommendations detailed herein.

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

A handwritten signature in dark ink, appearing to read "Alan R. Shark", is written over a horizontal line.

Alan R. Shark, President & CEO
Jill M. Lyon, Dir. of Regulatory Relations
1150 18th Street, NW, Suite 250
Washington, DC 20036

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez, Chtd.
1111 19th Street, NW, Suite 1200
Washington, DC 20036
(202) 857-3500

April 17, 1995

CERTIFICATE OF SERVICE

I, Allison J. Dalseg, in the office of the American Mobile Telecommunications Association, Inc., hereby certify that I have on this 17th day of April, 1995, caused to have hand-delivered a copy of the foregoing Reply Comments to the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554

Regina Keeney, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

Ralph Haller, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

Gerald Vaughan, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5002
Washington, DC 20554

Rosalind K. Allen, Chief
Commercial Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5202
Washington, DC 20554

David Furth, Deputy Chief
Commercial Radio Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW, Room 5202
Washington, DC 20554

Kathleen Wallman, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

John Cimko, Jr., Chief
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
1919 M Street, NW, Room 644
Washington, DC 20554

William E. Kennard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, NW, Room 614
Washington, DC 20554

Robert S. Foosaner, Esq. *
Larry Krevor, Esq.
Nextel Communications, Inc.
800 Connecticut Avenue, NW
Suite 1001
Washington, DC 20006

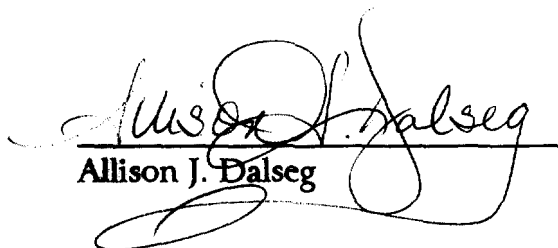
Mary Brooner, Esq. *
Motorola, Inc.
1350 Eye Street, NW
Suite 400
Washington, DC 20005

Emmett B. Kitchen *
President
PCIA
1019 19th Street
Suite 1100
Washington, DC 20036

Mark Crosby *
President and Managing Director
ITA/CICS
1110 North Glebe Road
Suite 500
Arlington, VA 22201

Michael Carper, Esq. *
Vice President & General Counsel
OneComm Corporation
4643 S. Ulster Street
Suite 500
Denver, CO 80237

Jeffrey R. Hultman *
President, Director and CEO
Dial Page, Inc.
301 College Street
Suite 700
Greenville, SC 29603-0767



Allison J. Dalseg

* via first-class mail